IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. A-182

75-5706

CHARLES WILLIAM PROFFITT,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

RESPONSE to State of Fla

PETITION FOR WRIT OF CERTIORARI TO THE

SUPREME COURT OF FLORIDA

ROBERT L. SHEVIN
Attorney General

A. S. JOHNSTON
Assistant Attorney General

The Capitol
Tallahassee, Florida 32304

COUNSEL FOR RESPONDENT.

I N D E X

TABLE OF CITATIONS

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. A-182

CHARLES WILLIAM PROFFITT,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Florida sought to be reviewed is reported as Charles William Proffitt v. State Florida, 315 So.2d 461 (Fla. 1975).

JURISDICTION

Respondent concedes that jurisdiction is properly being sought pursuant to 28 U.S.C. Section 1257(3), and to the extent that a substantial federal question is presented, this Court can excercise jurisdiction in the cause.

QUESTION PRESENTED

Whether the imposition and carrying out of the sentence of death for the crime of first degree murder under the law of Florida violate the Eighth or Fourteenth Amendment to the Constitution of the United States?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The respondent will agree that the constitutional and statutory provisions which may be involved in this case are as the petitioner has set forth in his petition for writ of certiorari on pages two (2) through seven (7).

STATEMENT OF THE CASE

The respondent will not accept the statement of the case as set forth by the petitioner on pages seven (7) through eighteen (18) of his petition for writ of certiorari.

The respondent would submit the following as an appropriate statement of the case, and the information next

appearing comes directly from the Florida Supreme Court's opinion which, as previously noted, is reported at 315 So.2d 461, and which is included as Appendix A to the petitioner's petition for writ of certiorari:

> "This cause is before the Court on direct appeal from the recommendation and sentencing to death of the appellant, Charles William Proffitt, by the Circuit Court of Hillsborough County, Florida. We have jurisdiction pursuant to Article V, Section 3(b)(1), Florida Constitution.
>
> The appellant was charged by a grand jury indictment with the murder in the first degree of Joel Ronnie Medgebow by stabbing.
>
> The evidence produced at trial established that on the morning of July 10, 1973, at about 4:45 A.M., the decedent's wife, Patricia Kay Medgebow, was awakened, apparently by her husband's moaning. She saw her husband proppoed up on one elbow with what later was discovered to be a knife in his hand. Suddenly, a man jumped up and struck her in the face several times fleeing through the open sliding glass doors. Fingerprints were later found on the door, however, they did not match the appellant's prints. The decedent's wife gave a description of the assailant but, at trial, she was unable to identify the appellant as the man who struck her on the morning of the homicide. In her description of the assailant, she claimed that he was wearing a white pin-striped shirt and either brown or grey trousers. She stated that on the evening prior to the killing she had shared a marijuana cigarette with four other people.
>
> The testimony of Michael Charles Seary, appellant's coworker, was presented to show that on the night preceding and during the morning prior to the homicide, the appellant and Seary had been out drinking until 3:30 or 3:45 A.M., and that the appellant had driven Seary home, had a brief conversation and left. Seary also stated that at the time, the appellant was wearing a short-sleeved, white Maas brothers' shirt with a blue oval emblem over the left breast, and grey trousers.

Further testimony revealed that the appellant and his wife lived in a two-bedroom mobile home, renting the other bedroom to a Mrs. Mary Helen Bassett and her infant daughter. Mrs. Bassett testified that on the evening prior to the homicide she had waited up with the appellant's wife for his return until approximately 1:00 A. M., but finally retired prior to his arrival. Over defense counsel's objection, she testified that she was awakened about half past five on the morning of July 10, 1973, and overheard a conversation between the appellant and his wife. She admitted that she did not hear the complete unbroken conversation, hearing only intermittent segments. She stated that she heard the appellant say that he had stabbed and killed a man during an attempted robbery and that he had beaten a woman. Mrs. Bassett also stated that she had not seen the appellant during the conversation but that she had recognized his noice.

Mrs. Proffitt, appellant's wife, testified that on the evening prior to the homicide, her husband had gone to work dressed in a white Maas Brothers' shirt and grey pants and returned from work at about a quarter past five the next morning wearing the same shirt and pants but was at that time barefooted.

A droplet and a smear of human blood were found on the Maas Brothers' shirt, however, the quantity was insufficient to type. The blood found on the knife was shown to be the same type as that of the victim but no fingerprints were detectable.

Upon this evidence, the jury found the defendant guilty as charged. The second half of the bifuricated proceeding was held, at which time it was shown that the appellant had been convicted in 1967 of the crime of breaking and entering without permission. In addition, the evidence adduced at trial was reiterated and the jury then retired to consider the recommendation of sentence. Upon returning, the jury recommended that the death penalty be imposed. The trial judge then ordered a mental examination of the defendant to determine his mental condition then and at the time of the homicide. The examination revealed that at the time of the commission of the homicide, the appellant was not mentally impaired.

The trial judge then sentenced the appellant to death and this appeal ensued.

[1] Appellant has raised eleven points on appeal. Each shall be treated in the order presented."

* * *

"[11] As to appellant's eighth, ninth and tenth points on appeal, we find no reversible error. The eighth point, dealing with the excusing of a juror because of preconceived notion about the death penalty, has been discussed and disposed of many times. Campbell v. State, 227 So.2nd 873 (Fla. 1969) et seq. Point nine relates to another comment made by counsel for the prosecution as to the chance for the rehabilitation of the appellant. Although a distateful comment, appellant has not cited any authority holding such comment error. The crime in this case is distateful, but to some extent fair comment is distateful. We, therefore, again find no reversible error.

Appellant's tenth point concerns whether the trial court did not consider evidence in mitigation when it sentenced the appellant to death. The trial court has carefully set forth all the circumstances in this case, to-wit:

"AS TO AGGRAVATING CIRCUMSTANCES:

(A) That the Defendant, CHARLES WILLIAM PROFFITT, murdered JOEL RONNIE MEDGEBOW from a premedicated design and while Defendant, CHARLES WILLIAM PROFFITT, was engaged in the commission of a felony, to-wit: burglary.

(B) That the Defendant, CHARLES WILLIAM PROFFITT, has the propensity to commit the crime for which he as convicted, to-wit: Murder in the First Degree and is a danger and menace to society.

(C) That the murder of JOEL RONNIE MEDGEBOW by the Defendant, CHARLES WILLIAM PROFFITT, was especially heinous, atrocious and cruel.

(D) That the Defendant knowingly through his voluntary and intentional acts leading up to and during the course

of the commission of the offense for which he was convicted created a great risk to serious bodily harm and death to many persons.

"AS TO MITIGATING CIRCUMSTANCES:

The Court finds that the enumerated mitigatigating circumstances set forth in F. S. 921.141[6](7) are primarily negated, in that,

(A) The Defendant, CHARLES WILLIAM PROFFITT, was convicted in 1967 of Breaking and Entering without permission.

(B) That the capital felony for which the Defendant, CHARLES WILLIAM PROFFITT, was convicted was not committed while the Defendant, CHARLES WILLIAM PROFFITT, was under the influence of extreme mental or emotional disturbance.

(C) That the victim, JOEL RONNIE MEDGEBOW, was not a participant in the Defendant's conduct nor did the victim, JOEL RONNIE MEDGEBOW, consent to the act.

(D) That the Defendant, CHARLES WILLIAM PROFFITT, was the only participant in the capital felony for which he has been convicted.

(E) That the Defendant, CHARLES WILLIAM PROFFITT, did not under extreme duress during the commission of the offense nor was he, during that period of time under the substantial domination of another person.

(F) That at the time of the commission of the offense the Defendant's capacity to appreciate the criminality to the requirements of law was not substantially impaired.

(G) The age of the Defendant, CHARLES WILLIAM PROFFITT, to-wit: age 28 years, has no particular significance and therefore is not a mitigating circumstance."

We must obviously conclude that no error was committed.

Finally, as to the appellant's eleventh point, whether the death penalty is cruel and unusual punishment, we note that this argument is meant to preserve the point for appeal, however, we are bound by our earlier pronouncement in State v. Dixon, 283 So.2d 1 (Fla.1973).

After carefully reviewing the record and briefs and after oral argument of the parties, we find that no reversible error has been shown and, therefore, the decision of the circuit court should be and is hereby affirmed." Proffitt v. State, supra pages 463, 464, 466 and 467.

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The respondent would submit that the petitioner adequately preserved the federal question presented in the case at bar at the appropriate times and in the appropriate Florida courts.

The history of this federal question preservation is set forth on pages fifteen (15) and sixteen (16) of the petitioner's petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER THE IMPOSITION AND CARRYING OUT OF THE SENTENCE OF DEATH FOR THE CRIME OF FIRST DEGREE MURDER UNDER THE LAW OF FLORIDA VIOLATE THE EIGHTH OR FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

ARGUMENT

In light of the questions left unanswered by this Court in Furman v. Georgia, 408 U.S. 238, 33 L.Ed.2d 346, 92 S.Ct. 2726 (1972), and the recent action taken in Fowler v. North Carolina, Case No. 73-7031 restoring said case to the oral argument calendar, 43 L.W. 3674, June 23, 1975, it would be absurd for the undersigned or the State of Florida to suggest that this case does not present a substantial federal question with regard to the validity of Florida's death penalty statute and the sentence imposed herein pursuant thereto.

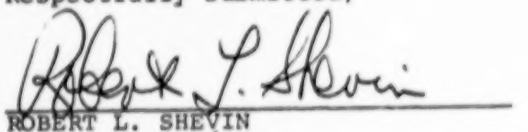
Accordingly, the State of Florida concedes that this federal question requires consideration by this Court so that it may authoritatively dispose of the merits of this issue. It should be noted that the State of Florida's position is, and will be, that the statutes involved and the judgement and sentence entered in accordance therewith are valid in all respects.

Respondent respectfully urges this Court to accept jurisdiction on this issue; to enter an order directing the parties to file their respective briefs on the merits; and to set the cause for oral argument before the Court during the October Term.

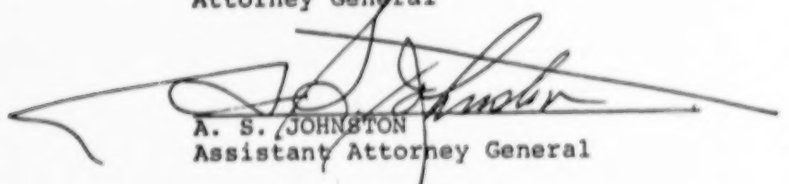
CONCLUSION

For the reasons hereinbefore advanced, the respondent agrees that this case merits review on the federal question presented and urges this Honorable Court to accept the cause for such review.

Respectfully submitted,



ROBERT L. SHEVIN
Attorney General



A. S. JOHNSTON
Assistant Attorney General

The Capitol
Tallahassee, Florida 32304

COUNSEL FOR RESPONDENT

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

Misc. No. 75-5706

CHARLES WILLIAM PROFFITT, Petitioner

V.

STATE OF FLORIDA

AFFIDAVIT

I, CHARLES WILLIAM PROFFITT, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees:

1. I am the petitioner in the above-entitled case.

2. Because of my property I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said case.

5. The nature of said cause is briefly stated as follows:

I was convicted of first degree murder and sentenced to death by the Circuit Court for Hillsborough County, Florida. I appealed the judgment of conviction and the sentence of death to the Florida Supreme Court; that court affirmed

both the judgment and sentence. I am now petitioning for a writ of certiorari to the Supreme Court of the United States.

Charles William Proffitt
Charles William Proffitt

Duly witnessed and
sworn to before me,
a Notary Public, this
27 day of August,
1975.

Notary Public

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. A-182

75-5706

CHARLES WILLIAM PROFFITT,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner, CHARLES WILLIAM PROFFITT, by his undersigned counsel, asks leave to file the attached Petition for Writ of Certiorari to the Supreme Court of Florida without prepayment of costs and to proceed in forma pauperis pursuant to Rule 53. The petitioner's affidavit in support of this motion is attached hereto.

JACK O. JOHNSON
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
Post Office Box 1216
Bartow, Florida 33830

DENNIS P. MALONEY
ASSISTANT PUBLIC DEFENDER
Bartow, Florida 33830

ATTORNEYS FOR PETITIONER

75-5706

CERTIFICATE OF SERVICE

RECEIVED
NOV 5 1975
OFFICE OF THE CLERK
SUPREME COURT, U.S.

I HEREBY CERTIFY that copy hereof has been furnished to the Attorney General's Office, The Capitol Building, Tallahassee, Florida 32304; and Petitioner, #041377, Florida State Prison, P.O. Box 747, Starke, Florida 32091, by mail this 3rd day of November, 1975.

JACK O. JOHNSON
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
Post Office Box 1216
Bartow, Florida 33830

DENNIS P. MALONEY
ASSISTANT PUBLIC DEFENDER
Bartow, Florida 33830

ATTORNEYS FOR PETITIONER